

SOLID WASTE AMENDMENTS

2011 GENERAL SESSION

STATE OF UTAH

Chief Sponsor: Kevin T. Van Tassell

House Sponsor: Bill Wright

LONG TITLE

General Description:

This bill provides that if a person obtains approval to build a commercial nonhazardous solid waste disposal facility that requires approval by the Legislature and the governor, the approved facility shall be operational within five years of the governor's approval, or approval to build the facility is revoked.

Highlighted Provisions:

This bill:

- ▶ provides that if a person obtains each approval required to build a commercial nonhazardous solid waste disposal facility for a facility that requires approval by the Legislature and the governor, the approvals will be revoked unless the approved facility is operational:
 - within five years after the day on which the governor's approval is received, if the person receives the governor's approval on or after May 10, 2011; or
 - on or before May 10, 2016, if the person receives all required approvals before May 10, 2011;
- ▶ clarifies the approval process required to build certain commercial nonhazardous or hazardous waste facilities;
- ▶ provides that a person that has received each approval to build a commercial nonhazardous solid waste disposal facility that requires approval by the Legislature and the governor, may not transfer the approvals, including the approved operation plan, to another person within five years after the day on which the governor's approval is received; and

30 ▶ makes technical changes.

31 **Money Appropriated in this Bill:**

32 None

33 **Other Special Clauses:**

34 None

35 **Utah Code Sections Affected:**

36 AMENDS:

37 **19-6-108**, as last amended by Laws of Utah 2007, Chapter 72



39 *Be it enacted by the Legislature of the state of Utah:*

40 Section 1. Section **19-6-108** is amended to read:

41 **19-6-108. New nonhazardous solid or hazardous waste operation plans for**
42 **facility or site -- Administrative and legislative approval required -- Exemptions from**
43 **legislative and gubernatorial approval -- Time periods for review -- Information required**
44 **-- Other conditions -- Revocation of approval -- Periodic review.**

45 (1) For purposes of this section, the following items shall be treated as submission of a
46 new operation plan:

47 (a) the submission of a revised operation plan specifying a different geographic site
48 than a previously submitted plan;

49 (b) an application for modification of a commercial hazardous waste incinerator if the
50 construction or the modification would increase the hazardous waste incinerator capacity above
51 the capacity specified in the operation plan as of January 1, 1990, or the capacity specified in
52 the operation plan application as of January 1, 1990, if no operation plan approval has been
53 issued as of January 1, 1990;

54 (c) an application for modification of a commercial nonhazardous solid waste
55 incinerator if the construction of the modification would cost 50% or more of the cost of
56 construction of the original incinerator or the modification would result in an increase in the
57 capacity or throughput of the incinerator of a cumulative total of 50% above the total capacity

58 or throughput that was approved in the operation plan as of January 1, 1990, or the initial
59 approved operation plan if the initial approval is subsequent to January 1, 1990; ~~or~~

60 (d) an application for modification of a commercial nonhazardous solid or hazardous
61 waste treatment, storage, or disposal facility, other than an incinerator, if the modification
62 would be outside the boundaries of the property owned or controlled by the applicant, as shown
63 in the application or approved operation plan as of January 1, 1990, or the initial approved
64 operation plan if the initial approval is subsequent to January 1, 1990~~[-]; or~~

65 (e) a submission of an operation plan to construct a facility, if previous approvals of the
66 operation plan to construct the facility have been revoked pursuant to Subsection (3)(c)(iii).

67 (2) Capacity under Subsection (1)(b) shall be calculated based on the throughput
68 tonnage specified for the trial burn in the operation plan or the operation plan application if no
69 operation plan approval has been issued as of January 1, 1990, and on annual operations of
70 7,000 hours.

71 (3) (a) (i) No person may own, construct, modify, or operate any facility or site for the
72 purpose of disposing of nonhazardous solid waste or treating, storing, or disposing of
73 hazardous waste without first submitting and receiving the approval of the executive secretary
74 for an operation plan for that facility or site.

75 (ii) (A) A permittee who is the current owner of a facility or site that is subject to an
76 operation plan may submit to the executive secretary information, a report, a plan, or other
77 request for approval for a proposed activity under an operation plan:

78 (I) after obtaining the consent of any other permittee who is a current owner of the
79 facility or site; and

80 (II) without obtaining the consent of any other permittee who is not a current owner of
81 the facility or site.

82 (B) The executive secretary may not:

83 (I) withhold an approval of an operation plan requested by a permittee who is a current
84 owner of the facility or site on the grounds that another permittee who is not a current owner of
85 the facility or site has not consented to the request; or

86 (II) give an approval of an operation plan requested by a permittee who is not a current
87 owner before receiving consent of the current owner of the facility or site.

88 (b) (i) Except for facilities that receive the following wastes solely for the purpose of
89 recycling, reuse, or reprocessing, no person may own, construct, modify, or operate any
90 commercial facility that accepts for treatment or disposal, with the intent to make a profit, any
91 of the wastes listed in Subsection (3)(b)(ii) without first submitting a request to and receiving
92 the approval of the executive secretary for an operation plan for that facility site.

93 (ii) Wastes referred to in Subsection (3)(b)(i) are:

94 (A) fly ash waste, bottom ash waste, slag waste, or flue gas emission control waste
95 generated primarily from the combustion of coal or other fossil fuels;

96 (B) wastes from the extraction, beneficiation, and processing of ores and minerals; or

97 (C) cement kiln dust wastes.

98 (c) (i) No person may construct ~~[any]~~ a facility listed under Subsection (3)(c)(ii) until
99 ~~[he]~~ the person receives~~[-, in addition to and subsequent to]:~~

100 (A) local government approval and [subsequent to] the approval [required] described in
101 Subsection (3)(a)[:];

102 (B) approval from the Legislature; and

103 (C) after receiving the approvals described in Subsections (3)(c)(i)(A) and (B),

104 approval ~~[by]~~ from the governor ~~[and the Legislature]~~.

105 (ii) ~~[Facilities]~~ A facility referred to in Subsection (3)(c)(i) ~~[are]~~ is:

106 (A) a commercial nonhazardous solid [or hazardous] waste [treatment or] disposal
107 [facilities] facility; [and]

108 (B) except for facilities that receive the following wastes solely for the purpose of
109 recycling, reuse, or reprocessing, any commercial facility that accepts for treatment or disposal,
110 with the intent to make a profit: fly ash waste, bottom ash waste, slag waste, or flue gas
111 emission control waste generated primarily from the combustion of coal or other fossil fuels;
112 wastes from the extraction, beneficiation, and processing of ores and minerals; or cement kiln
113 dust wastes~~[-]; or~~

114 (C) a commercial hazardous waste treatment, storage, or disposal facility.

115 (iii) The required approvals described in Subsection (3)(c)(i) for a facility described in
116 Subsection (3)(c)(ii)(A) or (B) are automatically revoked if:

117 (A) the governor's approval is received on or after May 10, 2011, and the facility is not
118 operational within five years after the day on which the governor's approval is received; or

119 (B) the governor's approval is received before May 10, 2011, and the facility is not
120 operational on or before May 10, 2016.

121 (iv) The required approvals described in Subsection (3)(c)(i) for a facility described in
122 Subsection (3)(c)(ii)(A) or (B), including the approved operation plan, are not transferrable to
123 another person for five years after the day on which the governor's approval is received.

124 (d) No person need obtain gubernatorial or legislative approval for the construction of
125 a hazardous waste facility for which an operating plan has been approved by or submitted for
126 approval to the executive secretary under this section before April 24, 1989, and which has
127 been determined, on or before December 31, 1990, by the executive secretary to be complete,
128 in accordance with state and federal requirements for operating plans for hazardous waste
129 facilities even if a different geographic site is subsequently submitted.

130 (e) No person need obtain gubernatorial and legislative approval for the construction of
131 a commercial nonhazardous solid waste disposal facility for which an operation plan has been
132 approved by or submitted for approval to the executive secretary under this section on or before
133 January 1, 1990, and which, on or before December 31, 1990, the executive secretary
134 determines to be complete, in accordance with state and federal requirements applicable to
135 operation plans for nonhazardous solid waste facilities.

136 (f) Any person owning or operating a facility or site on or before November 19, 1980,
137 who has given timely notification as required by Section 3010 of the Resource Conservation
138 and Recovery Act of 1976, 42 U.S.C. Section 6921, et seq., and who has submitted a proposed
139 hazardous waste plan under this section for that facility or site, may continue to operate that
140 facility or site without violating this section until the plan is approved or disapproved under
141 this section.

142 (g) (i) The executive secretary shall suspend acceptance of further applications for a
143 commercial nonhazardous solid or hazardous waste facility upon a finding that he cannot
144 adequately oversee existing and additional facilities for permit compliance, monitoring, and
145 enforcement.

146 (ii) The executive secretary shall report any suspension to the Natural Resources,
147 Agriculture, and Environment Interim Committee.

148 (4) The executive secretary shall review each proposed nonhazardous solid or
149 hazardous waste operation plan to determine whether that plan complies with the provisions of
150 this part and the applicable rules of the board.

151 (5) (a) If the facility is a class I or class II facility, the executive secretary shall approve
152 or disapprove that plan within 270 days from the date it is submitted.

153 (b) Within 60 days after receipt of the plans, specifications, or other information
154 required by this section for a class I or II facility, the executive secretary shall determine
155 whether the plan is complete and contains all information necessary to process the plan for
156 approval.

157 (c) (i) If the plan for a class I or II facility is determined to be complete, the executive
158 secretary shall issue a notice of completeness.

159 (ii) If the plan is determined by the executive secretary to be incomplete, he shall issue
160 a notice of deficiency, listing the additional information to be provided by the owner or
161 operator to complete the plan.

162 (d) The executive secretary shall review information submitted in response to a notice
163 of deficiency within 30 days after receipt.

164 (e) The following time periods may not be included in the 270 day plan review period
165 for a class I or II facility:

166 (i) time awaiting response from the owner or operator to requests for information
167 issued by the executive secretary;

168 (ii) time required for public participation and hearings for issuance of plan approvals;
169 and

170 (iii) time for review of the permit by other federal or state government agencies.

171 (6) (a) If the facility is a class III or class IV facility, the executive secretary shall
172 approve or disapprove that plan within 365 days from the date it is submitted.

173 (b) The following time periods may not be included in the 365 day review period:

174 (i) time awaiting response from the owner or operator to requests for information
175 issued by the executive secretary;

176 (ii) time required for public participation and hearings for issuance of plan approvals;
177 and

178 (iii) time for review of the permit by other federal or state government agencies.

179 (7) If, within 365 days after receipt of a modification plan or closure plan for any
180 facility, the executive secretary determines that the proposed plan, or any part of it, will not
181 comply with applicable rules, the executive secretary shall issue an order prohibiting any action
182 under the proposed plan for modification or closure in whole or in part.

183 (8) Any person who owns or operates a facility or site required to have an approved
184 hazardous waste operation plan under this section and who has pending a permit application
185 before the United States Environmental Protection Agency shall be treated as having an
186 approved plan until final administrative disposition of the permit application is made under this
187 section, unless the board determines that final administrative disposition of the application has
188 not been made because of the failure of the owner or operator to furnish any information
189 requested, or the facility's interim status has terminated under Section 3005 (e) of the Resource
190 Conservation and Recovery Act, 42 U.S.C. Section 6925 (e).

191 (9) No proposed nonhazardous solid or hazardous waste operation plan may be
192 approved unless it contains the information that the board requires, including:

193 (a) estimates of the composition, quantities, and concentrations of any hazardous waste
194 identified under this part and the proposed treatment, storage, or disposal of it;

195 (b) evidence that the disposal of nonhazardous solid waste or treatment, storage, or
196 disposal of hazardous waste will not be done in a manner that may cause or significantly
197 contribute to an increase in mortality, an increase in serious irreversible or incapacitating

198 reversible illness, or pose a substantial present or potential hazard to human health or the
199 environment;

200 (c) consistent with the degree and duration of risks associated with the disposal of
201 nonhazardous solid waste or treatment, storage, or disposal of specified hazardous waste,
202 evidence of financial responsibility in whatever form and amount that the executive secretary
203 determines is necessary to insure continuity of operation and that upon abandonment, cessation,
204 or interruption of the operation of the facility or site, all reasonable measures consistent with
205 the available knowledge will be taken to insure that the waste subsequent to being treated,
206 stored, or disposed of at the site or facility will not present a hazard to the public or the
207 environment;

208 (d) evidence that the personnel employed at the facility or site have education and
209 training for the safe and adequate handling of nonhazardous solid or hazardous waste;

210 (e) plans, specifications, and other information that the executive secretary considers
211 relevant to determine whether the proposed nonhazardous solid or hazardous waste operation
212 plan will comply with this part and the rules of the board; and

213 (f) compliance schedules, where applicable, including schedules for corrective action
214 or other response measures for releases from any solid waste management unit at the facility,
215 regardless of the time the waste was placed in the unit.

216 (10) The executive secretary may not approve a commercial nonhazardous solid or
217 hazardous waste operation plan that meets the requirements of Subsection (9) unless it contains
218 the information required by the board, including:

219 (a) evidence that the proposed commercial facility has a proven market of
220 nonhazardous solid or hazardous waste, including:

221 (i) information on the source, quantity, and price charged for treating, storing, and
222 disposing of potential nonhazardous solid or hazardous waste in the state and regionally;

223 (ii) a market analysis of the need for a commercial facility given existing and potential
224 generation of nonhazardous solid or hazardous waste in the state and regionally; and

225 (iii) a review of other existing and proposed commercial nonhazardous solid or

226 hazardous waste facilities regionally and nationally that would compete for the treatment,
227 storage, or disposal of the nonhazardous solid or hazardous waste;

228 (b) a description of the public benefits of the proposed facility, including:

229 (i) the need in the state for the additional capacity for the management of nonhazardous
230 solid or hazardous waste;

231 (ii) the energy and resources recoverable by the proposed facility;

232 (iii) the reduction of nonhazardous solid or hazardous waste management methods,
233 which are less suitable for the environment, that would be made possible by the proposed
234 facility; and

235 (iv) whether any other available site or method for the management of hazardous waste
236 would be less detrimental to the public health or safety or to the quality of the environment;
237 and

238 (c) compliance history of an owner or operator of a proposed commercial
239 nonhazardous solid or hazardous waste treatment, storage, or disposal facility, which may be
240 applied by the executive secretary in a nonhazardous solid or hazardous waste operation plan
241 decision, including any plan conditions.

242 (11) The executive secretary may not approve a commercial nonhazardous solid or
243 hazardous waste facility operation plan unless based on the application, and in addition to the
244 determination required in Subsections (9) and (10), the executive secretary determines that:

245 (a) the probable beneficial environmental effect of the facility to the state outweighs
246 the probable adverse environmental effect; and

247 (b) there is a need for the facility to serve industry within the state.

248 (12) Approval of a nonhazardous solid or hazardous waste operation plan may be
249 revoked, in whole or in part, if the person to whom approval of the plan has been given fails to
250 comply with that plan.

251 (13) The executive secretary shall review all approved nonhazardous solid and
252 hazardous waste operation plans at least once every five years.

253 (14) The provisions of Subsections (10) and (11) do not apply to hazardous waste

254 facilities in existence or to applications filed or pending in the department prior to April 24,
255 1989, that are determined by the executive secretary on or before December 31, 1990, to be
256 complete, in accordance with state and federal requirements applicable to operation plans for
257 hazardous waste facilities.

258 (15) The provisions of Subsections (9), (10), and (11) do not apply to a nonhazardous
259 solid waste facility in existence or to an application filed or pending in the department prior to
260 January 1, 1990, that is determined by the executive secretary, on or before December 31,
261 1990, to be complete in accordance with state and federal requirements applicable to operation
262 plans for nonhazardous solid waste facilities.

263 (16) Nonhazardous solid waste generated outside of this state that is defined as
264 hazardous waste in the state where it is generated and which is received for disposal in this
265 state shall not be disposed of at a nonhazardous waste disposal facility owned and operated by
266 local government or a facility under contract with a local government solely for disposal of
267 nonhazardous solid waste generated within the boundaries of the local government, unless
268 disposal is approved by the executive secretary.

269 (17) This section may not be construed to exempt any facility from applicable
270 regulation under the federal Atomic Energy Act, 42 U.S.C. Sections 2014 and 2021 through
271 2114.